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Filed : 4/10/2000

REMARKS

Applicant respectfully requests the Examiner to reexamine and reconsider this application, as amended. Claims 33-34, 38-40, 42, 48 and 57 have been amended to more clearly and definitely claim the subject matter that Applicant regards as the invention. New Claims 59-66 have been added. Each of the Examiner's objections is addressed below:

Claim Rejections - 35 U.S.C. § 103

The Examiner rejected Claims 33-41 and 51 under 35 U.S.C. § 103(a) as being obvious over Gabai et al (US 6,352,478) in view of Briggs (US 5,194,048) and Briggs (US 5,378,197) and further in view of Tillery et al (US 5,114,155). Applicant respectfully traverses this rejection and the Examiner's characterization of the applied references.

The Examiner has the initial burden of establishing a prima facie case of obviousness under Section 103. To satisfy this burden, the Examiner must show some objective teaching in the prior art that would lead a person of ordinary skill to combine or modify the relevant teachings of the references to produce Applicant's claimed invention. *In re Fine*, 837 F.2d 1071, 1074, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988) (*citations omitted*); see also, *In re Bell*, 991 F.2d 781, 782, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993) ("A prima facie case of obviousness is established when the teachings of the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art."). Applicant submits that a sufficient showing of obviousness has not been made in this case.

Gabai discloses an amusement park apparatus including a first plurality of entertainment providing nodes playing a second plurality of games with a third plurality of players who are simultaneously playing the second plurality of games, a node controller operative to assign each player from among the third plurality of players to an individual game from among the second plurality of games and operative to control each individual node from among the first plurality of nodes such that when the individual node enters into an interaction with an individual player, the node plays, with the individual player, the game assigned to the individual player, and a communication network operative to associate each of the first plurality of nodes with the node controller. Players are identified using RFID badges configured to automatically broadcast unique visitor identification data to each node. In Gabai it is essential to provide a central

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communication network to provide the necessary information to control each of the first plurality of nodes with the node controller.

Tillery discloses a system for conducting competitive dart leagues or dart tournaments using remotely located electronic dart games connected via an electronic network. To this end, each dart game player in a tournament or league game is provided with a player card that identifies the player relative to a dart game and stores certain data and game statistics associated with the player. A central control device periodically polls each remote dart game and uploads and assimilates current statistical data. The control device then calculates the standings of each player and downloads updated player standings to each remote dart game wherein it is displayed.

Neither Gabai, alone or in combination, discloses or suggests an interactive gaming system comprising a play structure, including one or more play modules and multiple play elements comprising one or more interactive games or challenges configured to be played or completed by play participants as part of an overall quest or mission and a portable indicium for receiving and storing tracked data identifying which interactive games or challenges have been played or completed by each said play participant, such as recited by amended Claim 40.

To more precisely define the scope of Applicant's claimed invention and to more clearly distinguish the claimed invention over the asserted combination of Gabai and Tillery, Applicant has amended Claim 33 to delete the portable data storage limitation and to add the further limitation that the portable indicium comprises a toy wand operable by play participants by waiving, shaking, stroking and/or tapping said wand in a predetermined manner. Neither Gabai or Tillery or any of the other cited references discloses an interactive gaming system having all of the features as recited by Claim 33, including a toy wand operable by waiving, shaking, stroking and/or tapping. Accordingly, Applicant submits that Claims 33-41, as amended, are in condition for allowance.

With specific regard to Claim 38, the Examiner maintains that it would have been obvious from Briggs '048 or '197 to include slide elements in the amusement system of Gabai to provide a "greater variety of entertainment; thereby increase participation and sales at the gaming site." Applicant respectfully disagrees. The Examiner's suggested motivation to provide "a variety of entertainment" is a blanket generality that can be said of virtually any possible conceivable modification of Gabai. There are many possible game elements that might provide a greater variety of gaming when combined with Gabai. Peanut butter is an attractive addition to

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jelly, but it says nothing to the issue whether there was a suggestion or motivation to combine. Applicant respectfully submits that the Examiner's suggested motivation in this case is far too vague to support a *prima facie* obviousness rejection in this case.

The interactive play system as recited by Claim 38 provides, *inter alia*, that multiple play modules are arranged or organized sequentially and interconnected by one or more slides such that a first group of games or challenges associated with a first play module are necessary to be played or completed before a second group of games or challenges associated with a second play module can be played or completed. The slides of Applicant's claimed invention interconnect multiple groups of games or challenges in a particular way to achieve a particular desired game sequence. Neither Gabai nor Briggs, alone or in combination, disclose these features and advantages of Applicant's claimed invention.

The Examiner rejected Claim 37 under 35 U.S.C. § 103(a) as being obvious in view of Gabai in view of Briggs. Applicant respectfully traverses this rejection. Applicant submits that it is the combination of the invention as a whole that must be weighted for patentability, not the individual components thereof. Thus, the fact that scoreboards exist and are used generally in the gaming arts does not establish the obviousness of Applicant's particular claimed invention in the absence of some teaching or suggestion to combine. In this case Applicant respectfully submits that the recited gaming system in combination with a scoreboard for displaying participant's scores is not an obvious combination. It provides surprising and advantageous synergies in how the interactive game is carried out and generates motivational competitions and more enthusiastic and more challenging and thrilling game play among individuals and groups playing the game. The scoreboard becomes an integral part of game play carried out in accordance with the invention and is not merely a convenient display of information.

Similarly, as to Claims 41 and 51, the fact that slides, rope bridges and the like may be known generally in the family play facilities, does not establish the obviousness of the particular claimed combination. In this case, Applicant submits that the combination is not obvious as it provides a new, seamless entertainment experience specifically designed to exercise both the minds and the bodies of play participants. Neither Gabai nor Briggs nor conventional family play facilities such as Chuck E. Cheese's provide or suggest the combination of the recited interactive gaming system with a physical play structure or the combination of the recited interactive play system with interconnecting physical challenges.

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The Examiner rejected Claim 42-50 and 52-58 under 35 U.S.C. § 103(a) as being unpatentable over Gabai in view of Tillery. Applicant respectfully traverses the rejection and the Examiner's characterization of the cited art.

The interactive quest game of the present invention as recited by Claims 42-50 utilizes multiple play elements that are conceptually, qualitatively or sensually distinct and configured and arranged to be played or completed by one or more play participants as part of an overall quest or mission. The multiple play elements are interlinked by an electronic tracking system that defines a particular play sequence or path network along which play participants must proceed to complete the desired quest or mission. Applicant has further amended Claim 42 to include the distinguishing limitation that at least a portion of the play elements communicate with the portable read/write electronic information storage and retrieval system in such a manner as to allow or deny access to a selected one or more of the play elements based on how many points or levels have been reached by a particular play participant and/or based on what objectives that participant as accomplished or helped accomplish. Neither Gabai nor Tillery, alone or in combination, disclose or suggest these or the other claimed features and advantages of Applicant's invention. Accordingly, Applicant respectfully submits that Claims 42-50 are patentable over the cited art.

With specific regard to Claims 52-58, Applicant notes that the recited interactive game is carried out such that play activities, goals, points or game levels achieved in one play environment are affected by or are dependent on play activities, goals, points or game levels achieved in another play environment. Neither Gabai nor Tillery, alone or in combination, disclose or suggest these or the other claimed features and advantages of Applicant's invention and, thus, these claims are also believed to be allowable.

With specific regard to Claim 54, the Examiner takes "official notice" that it is well known to have playing environments not connected by a network and that it would have been obvious to a person of ordinary skill to allow the game apparatus of Gabai or Tillery to operate independent of the network in cases of system failure. Applicant respectfully disagrees. Neither Gabai nor Tillery suggests an interactive game having the features and advantages of Applicants' claimed invention that would be capable of operating independently of a network. In fact, in each case (Gabai and Tillery), the network is an integral part of the working system. Applicant is further unaware of any other prior art gaming systems that would allow the recited game of

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Claim 52 to be carried out between first and second play environments that are geographically separate and are not connected by a network.

With specific regard to Claim 56, the Examiner maintains that it would have been obvious to provide the game card of Tiller or the RFID tag of Gabai in the form of a toy, the suggested motivation being to increase participation by small children who would be enticed by the toy. Applicant respectfully disagrees.

In Gabai, a wearable RFID tag is used as a means to locate and identify game participants. In Tillery, a game card is used as a means to store player scoring and statistics. Neither reference, or any other reference cited by the examiner, discloses or suggests the possibility or even the desirability of incorporating or integrating an RFID tag, card or any other information-bearing indicium into a toy for the purposes of carrying out an interactive game as recited by Applicant's Claim 56. The examiner's suggested motivation to entice small children is not a specific or definite enough motivation – in the absence of hindsight – to direct a person of ordinary skill in the art to produce the modifications as proposed by the Examiner. There are many ways to entice children. Moreover, the fact that the invention is simple to construct and carry out or, as the Examiner observes, would "merely involve connecting the tag... to a small toy" is not dispositive to the question of obviousness. Simplicity or the lack thereof has never been the test for obviousness and there are plenty of examples of important, pioneering inventions that were simple to construct or carry out. Applicant submits that Claim 56 distinguishes patentably from the cited prior art.

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CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully submits that this application, as amended, is now in condition for allowance and such action is earnestly requested. If the Examiner has any questions or suggestions concerning the amended claims or this response she is respectfully urged to contact the undersigned at the number indicated below.

Respectfully submitted,
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Response - Amendment
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